

1. Background.

- 1.1. The Care Act 2014 (implemented in April 2015) introduced a single new statute to replace most existing adult social care law. The care and support statutory guidance¹ formalised the expectations on local safeguarding adults boards to establish and agree a framework and process for how allegations against people working with adults with care and support needs (i.e. those in a position of trust) should be notified and responded to.
- 1.2. While the Care Act outlines clear legal duties on the local authority to undertake enquiries in certain circumstances where adults with care and support needs are identified as experiencing or being at risk of abuse or neglect (Care Act section 42), the Care Act does not set out any primary legal duties on the local authority associated with managing allegations against people who work in a position of trust with adults with care and support needs.
- 1.3. The care and support statutory guidance does, however, set out the expectation for local authorities and their relevant partners, as set out in section 6(7) of the Care Act, to have clear policies in line with those from the safeguarding adults board for dealing with allegations against people who work, in either a paid or unpaid capacity, with adults with care and support needs.
- 1.4. As such, this framework builds upon existing relevant statutory provision; particularly legislation that governs the lawful sharing of information, employer responsibilities to risk assess and manage the safety of their service and staff, and the Human Rights Act when balancing one right against another, or one person's rights against the interest of society. Any actions and interventions taken to address concerns or allegations that a person in a position of trust poses a risk of harm to adults with care and support needs must be lawful and proportionate, and accord with any relevant statutory provision, for example, Data Protection Act 1998, Human Rights Act 1998 and employment legislation.
- 1.5. Allegations against people who work with adults should not be dealt with in isolation. Any action necessary to address corresponding welfare concerns in relation to an adult involved should be taken without delay and in a coordinated manner.
- 1.6. The Care Act 2014 Statutory Guidance also requires that Employers, student bodies and voluntary organisations should have clear procedures in place setting out the process, including timescales, for investigation and what support and advice will be available to individuals against whom allegations have been made².
- 1.7. The Care Act 2014 Statutory Guidance also requires if an organisation removes an individual (paid worker or unpaid volunteer) from work with an adult with care and support needs (or would have, had the person not left first) because the person poses a risk of harm to adults, the organisation must make a referral to the Disclosure and Barring Service. It is an offence to fail to make a referral without good reason³.

¹ Care and Support statutory guidance: Chapter 14. (updated March 2016)

² Paragraph 14.126 Care and Support Statutory Guidance

³ Paragraph 14.127 Care and Support Statutory Guidance